

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ASHTON PLASTIC PRODUCTS, INC.	:	Case No.: C-1-02-529
	:	
Plaintiff,	:	Judge Dlott
	:	Magistrate Judge Sherman
vs.	:	
	:	RESPONSE OF PLAINTIFF ASHTON
FUSITE CORPORATION,	:	PLASTIC PRODUCTS, INC. TO
	:	DEFENDANT'S FIRST SET OF
Defendant.	:	INTERROGATORIES
	:	

Now comes Plaintiff, Ashton Plastic Products, Inc. and pursuant to Rule 33 of the Federal Rules of Civil Procedure, provides the following answers to the Defendant Fusite Corporation's First Set of Interrogatories:

1. State and describe all facts on which you base your allegation in Paragraph 12 of the Complaint that Fusite "was forcing customers, including customers such as Trane and Bristol, to purchase its terminal blocks if it [sic] wanted to purchase its glass-to-metal seals."

ANSWER:

All HVAC compressors currently require a glass-to-metal seal terminal mated to a terminal block. Fusite has a dominant position in the manufacture and sale within the United States of glass-to-metal seals. Ashton manufactures and sells terminal blocks.

In 1999, Ashton developed a patented anti cross thread insert for terminal blocks to prevent cross threading during installation. Ashton supplied terminal blocks with this new insert to a joint venture called Alliance Compressor, and approached other compressor manufacturers to see if there was interest in buying the common terminal block from Ashton with the anti cross thread feature.

Ashton sent a letter to Trane on November 30, 1999. Ashton received a request for quote from Trane on December 7, 1999. On December 8, 1999, Ashton sent a quote to Mr. Geoffrey Wilhelmy at Trane. Just before Christmas, Mr. Richard Kelch at Ashton received a call from Mr. Wilhelmy, who said that "we just made his year for cost reductions" and that "Christmas had come early." Mr.

Wilhelmy wanted to visit Ashton immediately after the holidays. On January 11, 2000, Mr. Wilhelmy and Mr. Scott Smerud (engineering) visited Ashton to discuss future purchases. During this visit, they revealed that they had been buying two parts from Fusite – a common terminal block and a “60” terminal block. Ashton’s pricing on the common terminal block was 52 cents, compared to Fusite’s 75 cents. Ashton’s pricing on the “60” terminal block was 94 cents, compared to Fusite’s \$2.95. Trane’s representatives appeared very excited at the idea of switching their purchases of terminal blocks from Fusite to Ashton, because their estimated savings by doing so over a three year period would be approximately \$390,000.

Geoff Wilhelmy of Trane also later informed Richard Kelch of Ashton that he had found out Trane could purchase certain of their glass-to-metal seals at a lower price from a small glass-to-metal seal manufacturer called Vitrus. Mr. Wilhelmy indicated that the total savings to Trane over a three year period by switching their purchases to Ashton and Vitrus from Fusite would be approximately \$500,000.

In later telephone conversations, in February 2000, Mr. Wilhelmy of Trane told Mr. Kelch of Ashton that Trane would not be switching the bulk of Trane’s terminal block purchases from Fusite to Ashton, nor glass-to-metal seal purchases from Fusite to Vitrus. The reason given was that there were certain glass-to-metal seals that Trane needed and could only get from Fusite, and Fusite had agreed to give certain price reductions to Trane on an “all or nothing” basis – that is, the prices would hold only if Trane bought their current requirements of terminal blocks and glass-to-metal seals from Fusite. Mr. Wilhelmy explained to Mr. Kelch that Trane could not afford to be shut off from their supply of glass-to-metal seal terminals or pay an exorbitant price for the glass-to-metal seal terminals not available from Vitrus, so Trane could not make the switch from Fusite to Ashton for terminal blocks. Trane was able to and has, however, purchased a certain amount of both the common and “60” terminal blocks from Ashton as “overflow” beyond their contracted for amount with Fusite.

A similar situation occurred with respect to Bristol Corp., another compressor manufacturer. Although there appeared to be an initial interest in purchasing terminal blocks from Ashton, per a Mr. Frank Ramsey at Bristol, in the end Ashton was told that Bristol was required to buy both its glass-to-metal seals and its terminal blocks from Fusite if they wanted to maintain their current pricing on glass-to-metal seals. This was confirmed in a letter from Tina Johnson at Bristol dated November 8, 2001.

Upon information and belief, Tecumseh Products may also have been a victim of Fusite’s forcing. In 1998, Ashton approached Tecumseh about selling Tecumseh the common terminal block, and during the course of communications Tecumseh found out that Ashton produced the large terminal block that Tecumseh was purchasing from Fusite at a substantially inflated price. Tecumseh subsequently informed Ashton that they would continue to purchase large terminal

blocks from Fusite. During conversations with Tecumseh (Mr. Richard Kelch of Ashton spoke with various representatives from Tecumseh), Ashton was informed that Tecumseh had to purchase certain glass-to-metal seal terminals from Fusite, and the implication was that this was the reason Tecumseh continued to pay more for its large terminal blocks from Fusite.

Other communications related to the above description are set forth in correspondence being produced contemporaneously.

2. Describe all communications (including but not limited to the identity of all participants in said communications, the date of each communication, the mode of communication and the substance of the communication) supporting your allegation in Paragraph 12 of the Complaint that Fusite “was forcing customers, including customers such as Trane and Bristol, to purchase its terminal blocks if it [sic] wanted to purchase its glass-to-metal seals.”

ANSWER: See answer to Interrogatory 1.

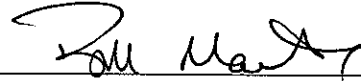
3. Identify all persons that you allege have been “forc[ed] to purchase terminal blocks from Fusite if it [sic] wanted to purchase its glass-to-metal seals.”

ANSWER: Ashton alleges that Trane Company and Bristol Compressors, Inc. have been forced to purchase terminal blocks from Fusite if they wanted to purchase its glass-to-metal seals. Upon information and belief, Tecumseh Products may also have been forced to purchase its terminal blocks from Fusite if it wanted to purchase Fusite’s glass-to-metal seals. Others may also have been forced, but at this point Ashton is without knowledge beyond what has been set forth.

4. When do you allege that Fusite began to “forc[e] customers, including customers such as Trane and Bristol, to purchase its terminal blocks if it [sic] wanted to purchase its’ glass-to-metal seals.?”

ANSWER: Ashton first became aware that Fusite was forcing customers to purchase its terminal blocks if they wanted to purchase its glass-to-metal seals in the year 1999. The conduct may have occurred in prior years.

Respectfully submitted,



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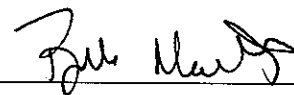
CERTIFICATE OF SERVICE

The foregoing was served by ordinary U.S. mail, postage prepaid, on this 24th day of January, 2003 upon the following:

Jerome J. Metz, Esq.
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VERIFICATION


STATE OF OHIO)

COUNTY OF)


Montgomery)

SS:

RICHARD E. KELCH, deposes and says that he/she has answered the foregoing Interrogatories truthfully and correctly to the best of his/her belief.


Signature

SWORN to and SUBSCRIBED in my presence this 6th day of February 2003.


Notary Public
My Commission Expires: May 21, 2006

NANCY M. MACUSKI, Notary Public
In and for the State of Ohio
My Commission Expires May 21, 2006